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Health Insurance Commission Amendment Bill
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No. 136 2001-02

Health Insurance Commission Amendment Bill 2002

Amanda Elliot
Social Policy Group
16 May 2002

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Health Insurance Commission Amendment Bill 2002

Date Introduced: 21 March 2002

House: Senate

Portfolio: Health and Ageing

Commencement: On Royal Assent, except Schedule 1, which commences on the later of (a) the 28th day after Royal Assent; (b) immediately after item 81 of Schedule 1 of the *Health Insurance Commission (Reform and Separation of Functions) Act 1997* commences.

Purpose

This Bill amends the *Health Insurance Commission Act 1973* ('the Act').

The purpose of the Bill is twofold.

First, the Bill proposes bringing the financial regime under which the Health Insurance Commission (HIC) operates into line with that applied to other Commonwealth authorities that are not Government Business Enterprises (GBEs). It proposes to do this by removing the special budget estimates and investment provisions applying to the HIC. In their place the Bill will apply to the HIC the general provisions of the *Commonwealth Authorities and Companies Act 1997* that apply to non-GBE Commonwealth authorities. The Bill also proposes enabling the HIC to borrow moneys for the purposes of its functions, with the written approval of the Finance Minister, but removes the ability of the HIC to enter into 'hedging' arrangements.

Second, the Bill proposes to amend the number of Commissioners of the HIC.

Background

The HIC, a Commonwealth statutory authority, was established in 1974 by the Whitlam government, to administer Medibank.¹ As part of its first set of changes to the Medibank program, the Fraser government established Medibank Private in 1976, which was

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operated by the HIC. With the establishment of Medicare by the Hawke government in 1984, the HIC became the authority through which it was administered. HIC continued to administer Medibank Private until after the passage of the *Health Insurance Commission (Reform and Separation of Functions) Act 1997*. The 1997 legislation separated Medibank Private from the HIC and provided for the creation of a new Medibank Private corporation.²

Since its establishment in 1974, the responsibilities of the HIC have expanded to include the administration of a range of health and allied programs, such as the administration of the Pharmaceutical Benefits Scheme in 1989 and of the 30% private health insurance rebate in 1999.³

All the activities of the HIC are conducted within the government policy framework set by the Department of Health and Aged Care, Department of Veterans' Affairs, Department of Family and Community Services and relevant legislation. The HIC currently administers:

- Medicare
- the Pharmaceutical Benefits Scheme (PBS)
- the Family Assistance Office (FAO) in partnership with Centrelink, the Australian Taxation Office and the Department of Family and Community Services
- the Australian Childhood Immunisation Register (Immunisation Register)
- the Australian Organ Donor Register (AODR)
- the Practice Incentives Program (PIP)
- the General Practice Immunisation Incentives scheme (GPII)
- the Compensation Recovery Program for Medicare and nursing home benefits
- the Rural Retention Program
- the Federal Government's 30% Rebate on private health insurance, and
- payments and claims for the Department of Veterans' Affairs treatment accounts, Office of Hearing Services and Health Department of Western Australia

The role of the HIC includes the detection and prevention of fraud and inappropriate servicing. In addition the HIC collates and publishes data on the Medicare Benefits Scheme, the Pharmaceutical Benefits Scheme and the Repatriation Pharmaceutical Benefits Scheme.

The first stated aim of this Bill is to '[modernise] the financial regime applying to the Health Insurance Commission', because the HIC 'has been operating under a much less

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flexible investment, budget estimates and borrowing framework than that which applies to other non-GBE Commonwealth authorities.⁴

The purpose of the *Commonwealth Authorities and Companies Act 1997* was to bring a greater degree of uniformity and clarity to the financial reporting standards that apply to Commonwealth authorities, and to establish standards of conduct for those engaged in the management of those entities.⁵ Section 9A of the *Health Insurance Commission Act 1973*, however, currently excludes, or narrows, the application to the HIC of relevant provisions of the *Commonwealth Authorities and Companies Act 1997* (which **do** apply to other non-GBE Commonwealth authorities). As a result, the HIC has a limited ability to invest surplus moneys and no capacity to borrow moneys.⁶ In addition, the HIC is subject to a special estimates regime that is more complex than that generally provided for under the *Commonwealth Authorities and Companies Act 1997*. The HIC is currently specifically exempt from the general provisions relating to preparation of budget estimates by non-GBE Commonwealth authorities,⁷ and is instead required to prepare separate budget estimates for each of its designated functions,⁸ and separate budget estimates in relation to its performance of its Medicare functions.⁹

The Bill proposes the following changes relevant to the aim of modernising the HIC's financial regime, so that the HIC 'will better be able to deliver quality outcomes and substantial savings both to itself and the Commonwealth' by:¹⁰

- removing the special budget estimates requirements and the restriction on investment of surplus moneys, that currently apply to the HIC, so that the HIC will instead be subject to the general provisions of the *Commonwealth Authorities and Companies Act 1997*
- allowing the HIC to borrow money for the purposes of its functions, with the written approval of the Finance Minister, and
- removing the ability of the HIC to enter into 'hedging' arrangements, *ie* arrangements that are made in order to protect against or reduce risk. Such arrangements are a form of insurance. The term hedging is most commonly used in futures and foreign exchange markets where traders attempt to prevent against potential future losses.¹¹

The second stated aim of the Bill is to ensure the HIC's 'continued effective functioning (particularly in terms of its committee structures)',¹² by ensuring the number of Commissioners is not reduced as earlier planned. When HIC was separated from Medibank Private in 1997, legislative provision was made for the number of HIC Commissioners to increase from seven to nine, but only for a five-year transitional period. It was envisaged that at the end of the transitional period the number of Commissioners would be reduced to 5, leaving a Commission comprising of the Chairperson, the Managing Director and 5 additional Commissioners. That five-year transitional period ends on 11 November 2002.

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This reduction in the number of Commissioners was to reflect as expected reduction in the responsibilities of the board due to the separation of Medibank Private and the HIC. However, over the past five years the HIC has expanded its administrative responsibilities in a number of areas (for example, in relation to the 30% government rebate for private health insurance, the Australian organ donor register and the Practice Incentives Program). In addition, there is currently legislation before Parliament that seeks to transfer responsibilities for approval of billing agents from the Private Health Insurance Administration Council (PHIAC) to the HIC.¹³ If successful, this transfer will also add to the administrative and regulatory responsibilities of the HIC. With the separation of Medibank Private from the HIC, the board of the HIC has focused significant attention on developing and expanding the strategic plan of the organisation, particularly in relation to the administration of government health programs.

As a result of these post-separation expansions, both the Government and the HIC maintain that in order to function effectively, and retain a workable committee structure,¹⁴ the HIC requires 7 Commissioners (plus the Chairperson and the Managing Director).

Main Provisions

Items 1, 5 and 6 of Schedule 1 bring the definition and terminology of the Act into line with that used in the *Commonwealth Authorities and Companies Act 1997*. This is accomplished by substituting the new term ‘Finance Minister’ for the obsolete description ‘Minister for Finance’ in subsections 32A(2) and section 33 of the Act. A new definition of ‘Finance Minister’ is inserted in the definitions provision of the Act, subsection 3(1).

Item 3 of Schedule 1 repeals section 9A of the Act, which currently excludes from, or narrows, the application to the HIC of the general provisions of the *Commonwealth Authorities and Companies Act 1997* relating to preparation of budget estimates and investment of surplus moneys. **Item 2 of Schedule 1** makes a change to the note which attaches to section 9 of the Act, consequent upon the repeal of section 9A effected by Item 3 of Schedule 1.

Item 7 of Schedule 1 repeals sections 33A and 34 of the Act. This removes the standing requirement that the HIC prepare ‘separate budget estimates... relating to the Commissions’ performance of each of its designated functions’ (subsection 33A(2) of the Act) and ‘budget estimates ... relating to the Commissions performance of its Medicare functions’ (subsection 34(1) of the Act). In combination with **Item 3 of Schedule 1**, this brings the HIC into line with the estimates provisions of the *Commonwealth Authorities and Companies Act 1997* in application to non-GBE Commonwealth authorities.

Item 4 of Schedule 1 states the following:

The requirement to prepare budget estimates for the Health Insurance Commission for a financial year in accordance with section 14 of the *Commonwealth Authorities and*

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Companies Act 1997, is taken to have been met if budget estimates have been prepared for that year in accordance with sections 33A and 34 of the *Health Insurance Commission Act 1973* as in force before this item commences.

This is explained in the Explanatory Memorandum as ‘a transitional provision designed to ensure the adequacy of estimates prepared by the Commission under the repealed sections 33A and 34 estimates regime, at a time when those provisions were still operative.’

Item 8 of Schedule 1 replaces section 36 of the Act - which prohibited the HIC from borrowing moneys and limited its ability to invest surplus funds - with a **proposed new section 36**. The new provision will authorise the HIC to borrow money for the purposes of its statutory functions, with the written approval of the Finance Minister (**proposed new subsection 36(1)**). The HIC’s borrowing power will be limited by **proposed new sub-section 36(2)**, however, which states that the HIC must not borrow money to make payments in order to carry out its Medicare functions or ‘any additional functions that are conferred on it under subsection 8AA(2).’

Item 9 of Schedule 1 repeals section 36AA of the Act, thereby withdrawing the HIC entitlement to enter into ‘hedging’ arrangements.

With the separation of Medibank Private from the HIC in 1997, a number of HIC functions became redundant and were repealed by the *Health Insurance Commission (Reform and Separation of Functions) Act 1997*. However, Section 36AA of the *Health Insurance Commission Act 1973*, which allowed the HIC to enter into hedging arrangements in certain limited circumstances, was retained.

The proposed removal of the hedging provisions in the Act is primarily due to the fact that the HIC no longer has to manage the risks associated with the provision of private insurance.

Item 1 of Schedule 2 relates to the number of Commissioners of the HIC and substitutes a reference to “7” Commissioners under paragraph 10(1)(c) of the Act, for the reference to “5” such Commissioners. The result of this amendment will be to set the number of Commissioners of the HIC at 7 plus the Chairperson and the Managing Director.

Endnotes

- 1 By virtue of the passage of the *Health Insurance Commission Act 1973*, at a joint sitting of both Houses of Parliament.
- 2 Further information about this legislation can be obtained from the Parliamentary Library, *Bills Digest No. 22, 1997–98* at: <http://www.aph.gov.au/library/pubs/bd/1997-98/98bd022.htm>

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- 3 Further background on the role and function of the HIC can be obtained from the Commission at: <http://www.hic.gov.au>.
- 4 Senator Ian Campbell, Health Insurance Commission Amendment Bill 2002, *Second Reading Speech*, Senate, 21 March 2002, p. 1204.
- 5 Further information about the *Commonwealth Authorities and Companies Act 1997* can be obtained from the Parliamentary Library, *Bills Digest 108, 1996–97* at: <http://www.aph.gov.au/library/pubs/bd/1997-98/98bd022.htm>
- 6 See *Health Insurance Commission Act 1973*, ss 9A and 36, *Commonwealth Authorities and Companies Act 1997*, s 18(4).
- 7 Imposed by *Commonwealth Authorities and Companies Act 1997*, s 14; the exemption is contained in *Health Insurance Commission Act 1973*, s 9A.
- 8 *Health Insurance Commission Act 1973*, s 33A.
- 9 *Health Insurance Commission Act 1973*, s 34.
- 10 Senator Ian Campbell, Health Insurance Commission Amendment Bill 2002, *Second Reading Speech*, Senate, 21 March 2002, p1204.
- 11 Carew, Edna *The language of money*, Sydney, Allen & Unwin 1988
- 12 Senator Ian Campbell, Health Insurance Commission Amendment Bill 2002, *Second Reading Speech*, Senate, 21 March 2002, p1204.
- 13 Further information relating to these legislative proposals can be obtained from the Parliamentary Library, *Bills Digest No 143, 2001–02*
- 14 Information on the Committee structure of the HIC can be found at the Commissions web site at: <http://www.hic.gov.au>

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